

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TU TUAN NGUYEN,)
)
Plaintiff,)
)
v.) 1:16CV202
)
STATE OF NORTH CAROLINA, et al.,)
)
Defendants.)

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On April 28, 2016, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Plaintiff Nguyen failed to file timely objections, and the Court entered Judgment on May 27, 2016. On June 2, 2016, the Court received Plaintiff's Objections [Doc. #7] and an Application to Proceed IFP [Doc. #8]. The Court then vacated the previously-entered Judgment and referred the matter for further consideration.

Having considered the information submitted, the Court notes that Plaintiff has now submitted an IFP Application. However, he has not addressed the remaining deficiencies noted in the earlier Recommendation. Rather, Plaintiff simply re-filed the same documents that he previously submitted. Therefore, for the reasons set out in the April 28, 2016 Recommendation, the Complaint and Amended Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper forms, which corrects the defects of the present filings.

To the extent that Plaintiff raises issues pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015), those issues have been separately raised in Plaintiff's Motion to Vacate Sentence under 28 U.S.C. § 2255 (Case No. 1:13CV369, 1:06CR234-2), and those issues are being considered in that proceeding. Plaintiff cannot use the present action under § 1983 to challenge his conviction and sentence. Therefore, these contentions would not affect the determination in the present action.

IT IS THEREFORE RECOMMENDED that this action be filed and dismissed without prejudice to Plaintiff filing a new complaint, on the proper forms, which corrects the defects cited above.

This, the 11th day of July, 2016.

/s/ Joi Elizabeth Peake
United States Magistrate Judge